IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

CRP.No. 2152 of 2002(G)

AA.161/1997 of A.A.(LAND REFORMS),TRIVANDRUM
OA.36/1993 of LAND TRIBUNAL, KOLLAM
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REVN. PETITIONER: RESPONDENT/APPLICANT:

AJI, MULAKKAZHIKATHU VEEDU,
THATTAMALA P.O., VADAKKEVILA, KOLLAM.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENTS: STATE AND APPELLANT/RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, TRIVANDRUM.

2. RAJU, THODIYIL VEEDU,
MULLUVILA, VADAKKEVILA, KOLLAM.

R2 BY ADV. SRI.B.SURESH KUMAR
SMT.C.G.PREETHA
SRI.P.R.PAVITHRAN
SMT.T.V.NEEMA
R1 BY GOVERNMENT PLEADER SRI. M.R. SABU.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16 /03/ 2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 2152 OF 2002

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Dated this the 16th day of March, 2007.

O R D E R

This revision is preferred against the order of the Appellate Authority, Trivandrum in A.A.161/97. The revision petitioner filed an application before the Land Tribunal, Kollam as O.A.36/93 for the purchase of kudikidappu right over 5 cents of property. The Land Tribunal allowed the purchase of kudikidappu and in appeal the Appellate Authority reversed the finding of the Land Tribunal and it is against that decision, the present revision is preferred.

2. The learned counsel for the revision petitioner contends that the order of the Appellate Authority is blank and it is liable to be set aside. With the help of the counsel appearing for both sides I had tried to understand the matter. As per the copy of the kudikidappu application in paragraph 5 it is stated that the grandfather of the applicant was residing in the property from 1962 and on his death, he has continued to reside therein. The revision petitioner is the son of respondent in his first wife. It is also submitted that at the age of one and half years, he lost his

mother and thereafter the grandparents have been looking after him. It is seen from the records available here that as per a proceeding in O.A.106/70, the purchase certificate has been issued in the name of the respondent namely father. In order to entitle a person to get kudikidappu right, the ingredients u/s 2(25) of the kudikidappukaran has to be complied with. The Revenue Inspector who inspected the property had clearly stated that the age of the entry of the applicant into the property is clearly two years old. It has to be stated that even going by the recitals in the application one cannot find out the ingredients necessary to constitute the kudikidappu right. U/s 2(25) of the K.L.R. Act, "kudikidappukaran is a person who has not a homestead and who has been permitted with or without an obligation to pay rent by a person in lawful possession of any land to have the use and occupation of a portion of such land for the purpose of erecting a homestead; or who has been permitted by a person in lawful possession of any land to occupy, with our without an obligation to pay rent". So, in order to entitle a person to have kudikidappu right over the property, the property must belong to a third person and such third person with or without rent had permitted the person to construct or erect a homestead in the property. Going

by the recitals in column No.5 of the application it is stated that the applicant continues to live in the same house after the death of the grandfather and he does not claim any kudikidappu right under the grandfather. So what is continued is the joint residence along with the grandfather and the father rightly or wrongly contended that he had obtained right over the property by virtue of a purchase certificate issued by the Land Tribunal. So there are absolutely no averments in the petition to the effect that the father at any point of time had given him permission to erect a homestead which is a fundamental ingredient necessary for the purpose of claiming kudikidappu right over the property. It is also to be stated that the order of the Land Tribunal as well as the Appellate Authority is far from satisfactory. Being a very old matter, I had perused the records and dispose the case. As stated by me earlier, the materials are insufficient to establish or to hold that the revision petitioner is having kudikidappu right over the property. Therefore, the revision lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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M.N. KRISHNAN, J.
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C.R.P. NO. 2152 OF 2002
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J U D G M E N T

16th March, 2007.